

## **SETTLEMENT AGREEMENT AND RELEASE**

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California, 95814, and A.J. Lima Trucking Inc. and AJL Services (hereinafter "AJ LIMA"), located at 8638 Almond Avenue, Fontana, California 92335.

### **I. RECITALS**

- (1) California Health and Safety Code (HSC) section 44011.6 established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, California Code of Regulations (CCR), title 13, chapter 3.5, sections 2180-2188.
- (2) HSC section 43701 provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excess smoke emissions.
- (3) HSC section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) per vehicle...."
- (4) HSC sections 39650-39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the ARB identified particulate matter (PM) from diesel-fueled engines as a TAC. In-use on-road diesel vehicles are powered by diesel fuel engines that emit toxic PM. On-road vehicles are controlled under CCR, title 13, section 2025.
- (5) HSC 44275 et seq. establishes the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program). The Carl Moyer Program provides incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions.
- (6) HSC 44288 states that Carl Moyer Program funds "shall be awarded in conjunction with the execution of a contract that obligates the state board or a participating district to make the grant and obligates the grantee to take the actions described in the grant application." Such contract shall contain

## SETTLEMENT AGREEMENT AND RELEASE

ARB and AJ Lima

Page 2 of 4

recapturing provisions to ensure and enhance the effectiveness of the Carl Moyer Program.

- (7) HSC 44287 requires ARB establish grant criteria and guidelines for the Carl Moyer Program. The Carl Moyer Program Guidelines states that non-compliance with the Carl Moyer Agreement or Guidelines may result in the cancellation of the Agreement, recapturing of voucher funds, or any other remedy available under law.
- (8) AJ LIMA signed seven Moyer applications affirming they were in compliance with all federal, state, and local air quality regulations and would stay in compliance. Based on those applications, AJ LIMA is the recipient of seven California ARB Carl Moyer vouchers in the amount of \$35,000 each, issued through the ARB Voucher Incentive Program (VIP) in 2012.
- (9) ARB contends that AJ LIMA violated the terms of the Carl Moyer Agreement as the applicant's vehicles were part of a fleet of more than 10 trucks and therefore not eligible for VIP money.
- (10) In order to resolve these alleged violations, AJ LIMA has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.
- (11) AJ LIMA is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation, and therefore agree as follows:

### II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against AJ LIMA for the violations referred to above, the ARB and AJ LIMA agree as follows:

- (1) Upon execution of this Agreement, AJ LIMA shall return a portion of Moyer funds of twenty five thousand dollars (\$25,000.00). Payment shall be made in check form as described below and the payments will be made no later than December 20, 2013.

### SETTLEMENT AGREEMENT AND RELEASE ARB AND AJ LIMA:

- \$25,000.00      made out to the San Diego Air Pollution Control District

## SETTLEMENT AGREEMENT AND RELEASE

ARB and AJ Lima

Page 3 of 4

All payments and documents shall be sent to the attention of:

Robbie Morris  
Air Resources Board, Enforcement Division  
P.O. Box 2815  
Sacramento, California

- (2) AJ LIMA shall not violate HSC sections 43701 *et seq.* and 44011.6 *et seq.*, and CCR, title 13, sections 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (3) Each 1974 or newer diesel powered heavy-duty vehicle in the AJ LIMA fleet shall remain in compliance with the emission control label (ECL) requirements set forth in the CCR, title 13, section 2183(c).
- (4) AJ LIMA shall instruct all employees who operate diesel fueled commercial vehicles in California to comply with the idling regulations set forth in CCR, title 13, section 2485 within 45 days of the execution of this agreement.
- (5) AJ LIMA shall not violate the Truck and Bus regulation as codified in CCR, title 13, section 2025.
- (6) This Agreement shall apply to and be binding upon AJ LIMA and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (7) This Agreement constitutes the entire agreement and understanding between ARB and AJ LIMA concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and AJ LIMA concerning the subject matter hereof.
- (8) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (9) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (10) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

SETTLEMENT AGREEMENT AND RELEASE  
ARB and AJ Lima  
Page 4 of 4

- (11) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (12) Now, therefore, in consideration of the return of Moyer funds in the amount of twenty five thousand dollars (\$25,000.00), ARB hereby releases AJ LIMA and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in Recital paragraphs (1) through (9) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

AJ LIMA TRUCKING, INC.

By: *Ellen M. Peter*

By: *AJ Lima*

Name: Ellen M. Peter

Name: Anthony J. Lima

Title: Chief Counsel

Title: President

Date: 12/20/2013

Date: 12/11/2013